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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

LEE R.,

Petitioner,

v.

THE SUPERIOR COURT OF TULARE
COUNTY,

Respondent;

TULARE COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Real Party in Interest.

F064266

(Super. Ct. No. JJV061773C)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Charlotte A. Wittig, Commissioner.

Jean Bourn, for Petitioner.

No appearance for Respondent.

Kathleen Bales-Lange, County Counsel, John A. Rozum, Chief Deputy County Counsel and Abel C. Martinez, Deputy County Counsel, for Real Party in Interest.

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* Before Wiseman, Acting P.J., Kane, J., and Franson, J.

Lee R. seeks an extraordinary writ (Cal. Rules of Court, rule 8.452) from the juvenile court's orders issued at a contested dispositional hearing denying him reunification services pursuant to Welfare and Institutions Code section 361.5, subdivision (b)(10) and (11)¹ and setting a section 366.26 hearing as to his two-year-old son B. We will deny the petition.

FACTUAL AND PROCEDURAL SUMMARY

Lee and Amanda are the parents of two children, B., the subject of this writ petition, and a four-year-old daughter, D. Amanda has a history of mental illness and substance abuse and she and Lee have a history of domestic violence and child neglect. In 2008, then six-month-old D. was removed from Lee and Amanda's custody and adopted by Lee's mother in 2010.

The events precipitating B.'s removal occurred in July 2011 when B. was injured while in Amanda's care. Police Officer Zieg responded along with emergency medical personnel to Amanda's 911 call. He observed that B.'s "back was red, scratched, and full of abrasions and bruising from the bottom of his neck to his waist." Officer Zieg reported that B. did not seem to be in pain and was running around the living room. Amanda told Officer Zieg that she was washing B. in the shower when he began to scream and throw his toys. She handed B. a towel, told him to get out and continued to shower until she heard him screaming. She found him on his back on the floor between the couch and the coffee table. Amanda and Lee were living together at the time, but Lee was at work.

The emergency medical personnel transported B. to the hospital for a medical evaluation because of the redness around his neck and what looked like finger marks on

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

his back. Dr. Shubert evaluated B. and concluded that he had ecchymosis (superficial bleeding under the skin) and abrasions on his back and neck and discharged him to the family's care. Dr. Shubert told Officer Zieg that B.'s injuries were consistent with abrasions from a fall and his back being scraped against an unknown object. Officer Zieg forwarded his report to the Tulare County Health and Human Services Agency (agency). Another police officer took photographs of B.'s injuries.

In August 2011, nearly a month after B. was injured, Detective Jennings interviewed Amanda at the police department. Social worker Melissa Hall observed the interview via computer and viewed the photographs of B.'s injuries. She concluded that B. was physically abused and obtained a protective order for his removal.

The agency took B. into protective custody and placed him with Lee's mother. The night before B. was removed, Amanda left the family home and her whereabouts remained unknown throughout these proceedings. We refer to her only where necessary for clarity.

The agency filed a dependency petition, alleging in part that Amanda physically abused B. and that she and Lee engaged in domestic violence which placed B. at risk for physical abuse. The petition also alleged that Lee abused or neglected D. and that his reunification services and parental rights to her were terminated.

In late August 2011, the juvenile court detained B. pursuant to the petition, took judicial notice of D.'s juvenile court file and authorized a substance abuse evaluation and random drug testing for Lee. The juvenile court also ordered twice weekly supervised visitation and set a contested jurisdictional hearing for September 2011.

In September 2011, Lee completed a substance abuse evaluation, but was not referred for treatment. He admitted using marijuana, but stated it was prescribed for various medical conditions. The evaluator did not find any evidence that Lee was using marijuana in excess of the amount prescribed.

The jurisdictional hearing was continued and conducted in January 2012. Meanwhile, Lee participated in drug treatment, parenting classes and a 52-week batterer's treatment program. He also attended weekly support meetings, obtained a sponsor and completed the first two steps of the 12-step program.

In January 2012, the juvenile court conducted the contested jurisdictional hearing during which it heard medical expert testimony concerning B.'s injuries. At the conclusion of the hearing, the juvenile court sustained the petition.

In February 2012, the juvenile court conducted the contested dispositional hearing on the agency's recommendation to deny Lee reunification services pursuant to section 361.5, subdivision (b)(10) and (11).² At issue was whether Lee made sufficient efforts following the termination of his reunification services and parental rights as to D. to remedy the problems requiring her removal. Lee's attorney submitted letters from Lee's services providers stating that Lee completed 11 of the 18 parenting classes, was in compliance with his drug treatment program and completed the ninth week of the batterer's treatment program.

² Section 361.5, subdivision (b)(10) and (11) provides in pertinent part:

“(b) Reunification services need not be provided to a parent ... when the court finds, by clear and convincing evidence [¶] ... [¶] (10) [t]hat the court ordered termination of reunification services for any siblings ... of the child because the parent ... failed to reunify with the sibling ... and [the] parent ... has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling ... of that child from that parent [¶] (11) [t]hat the parental rights of a parent over any sibling ... of the child had been permanently severed, ... and [the] parent has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling ... of that child from the parent.”

County counsel argued that Lee failed to remedy the problems that required D.'s removal, specifically citing his ongoing domestic violence with Amanda. Lee's attorney argued that Lee made reasonable efforts to resolve his problems, citing the fact that he and Amanda were no longer living together and that Lee was addressing his domestic violence and marijuana use.

Minor's counsel concurred in the agency's recommendation to deny Lee reunification services and pointed out that Lee also participated in reunification services during D.'s dependency and vowed to separate from Amanda. Minor's counsel stated that Lee's co-dependent relationship with Amanda was the primary reason that his reunification services as to D. were terminated and that he had not resolved that issue.

At the conclusion of the hearing, the juvenile court ordered B. removed from Lee and Amanda's custody, denied Lee reunification services pursuant to section 361.5, subdivision (b)(10) and (11) and set a section 366.26 hearing. The juvenile court also denied Amanda reunification services. This petition ensued.³

DISCUSSION

When the juvenile court removes a child from parental custody, it must order reunification services unless it finds by clear and convincing evidence that the parent satisfies any of the exceptional circumstances set forth in section 361.5, subdivision (b). (§ 361.5, subd. (a).) In this case, the juvenile court denied Lee reunification on the basis of two of the circumstances, subdivision (b)(10) and (11) of section 361.5 (hereafter subdivision (b)(10) and (11)).

Subdivision (b)(10) allows the juvenile court to deny a parent reunification services where it previously terminated reunification services for the child's sibling because the parent failed to reunify with the sibling and the parent did not subsequently

³ Amanda did not file a writ petition.

make a reasonable effort to treat the problems that led to the sibling's removal.

Subdivision (b)(11) allows the juvenile court to deny reunification services to a parent whose parental rights to the child's sibling were permanently severed and who did not subsequently make a reasonable effort to treat the problems that led to the sibling's removal.

Lee does not dispute that his reunification services and parental rights as to D. were terminated. However, he contends the juvenile court erred in denying him reunification services under subdivision (b)(10) and (11) because he made reasonable efforts to treat the problem(s) requiring D.'s removal. To that end, he cites evidence that he ended his relationship with Amanda, entered drug treatment, tested negative for marijuana and attended parenting and domestic violence classes. He does not, however, address case authority which interprets "reasonable efforts" under the statute to be those made before a subsequent child is removed.

The timeframe to which the reasonable efforts provision applies has been determined to be that period following the failure to reunify with a child and the removal of a subsequent child. (*Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 744-745 (*Renee J.*)). As one court explained, "The inclusion of the 'no-reasonable effort' clause in the statute provides a means of mitigating an otherwise harsh rule that would allow the court to deny services simply on a finding that services had been terminated as to an earlier child when the parent had in fact, *in the meantime*, worked toward correcting the underlying problems." (*In re Harmony B.* (2005) 125 Cal.App.4th 831, 842; italics added.) To credit a parent's efforts made only after a subsequent child has been removed would ignore the problem the statute recognizes (i.e., recidivism despite reunification efforts) and a cycle of failed efforts at governmental expense. (*Renee J.*, *supra*, 26 Cal.4th at pp. 744-745.)

In this case, the juvenile court stated that Lee made no attempt to address the problems necessitating D.'s removal until B. was also removed and thus found that he failed to make subsequent reasonable efforts to treat the problems under subdivision (b)(10) and (11). In light of the evidence, we concur in the juvenile court's orders denying Lee reunification services under subdivision (b)(10) and (11) and setting the section 366.26 hearing and deny the petition.

DISPOSITION

The petition for extraordinary writ is denied. This opinion is final forthwith as to this court.